PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1977

WESTERN STAR HOSPITAL AUTHORITY INC., d/b/a Metro Health EMS,

Plaintiff – Appellant,

v.

CITY OF RICHMOND, VIRGINIA; RICHMOND AMBULANCE AUTHORITY,

Defendants – Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. John A. Gibney, Jr., District Judge. (3:18-cv-00647-JAG)

Argued: December 10, 2020 Decided: January 19, 2021

Before MOTZ, THACKER, and QUATTLEBAUM, Circuit Judges.

Affirmed by published opinion. Judge Motz wrote the opinion, in which Judge Thacker and Judge Quattlebaum joined.

ARGUED: Luke Andrew Hasskamp, BONA LAW PC, La Jolla, California, for Appellant. Craig Thomas Merritt, CHRISTIAN & BARTON, LLP, Richmond, Virginia; Wirt Peebles Marks, IV, RICHMOND CITY ATTORNEY'S OFFICE, Richmond, Virginia, for Appellees. **ON BRIEF:** Aaron R. Gott, Jarod M. Bona, BONA LAW PC, La Jolla, California, for Appellant. David P. Corrigan, Melissa Y. York, HARMAN CLAYTOR CORRIGAN & WELLMAN, Glen Allen, Virginia; David B. Lacy, CHRISTIAN & BARTON, LLP, Richmond, Virginia, for Appellees.

DIANA GRIBBON MOTZ, Circuit Judge:

For almost thirty years, the Richmond Ambulance Authority ("RAA"), a public body created by the Commonwealth of Virginia and governed by the City of Richmond ("the City"), has provided nonemergency medical transportation services to the Hunter Holmes McGuire Veteran's Administration Medical Center ("the VA Medical Center"). In 2018, however, the VA Medical Center requested quotes from other service providers. One quote came from Western Star Hospital Authority, Inc., doing business as Metro Health EMS ("Metro Health"). The VA Medical Center selected Metro Health's bid on the condition that Metro Health could obtain a permit from the City to operate emergency medical services ("EMS") vehicles. When the City refused to grant Metro Health a permit, it brought this action against the City and the RAA, alleging violations of the Sherman Antitrust Act and the Supremacy Clause of the United States Constitution. The district court dismissed the case with prejudice, concluding that the defendants enjoy immunity from federal antitrust liability and that federal law does not preempt their actions. We agree and so affirm.

I.

Like many municipalities, the City operates its EMS system through a public utility model. Under this model, the City contracts with a single provider to manage *all* EMS vehicle operations in the City. This ensures that the City's EMS system does not neglect costly, but essential emergency response services in favor of more profitable nonemergency services. Critically, however, the economic feasibility of the public utility

model depends on the EMS provider's exclusivity in the marketplace. This is so because revenues generated by profitable, nonemergency transports are needed to offset the cost of providing emergency services to all, including those without health insurance.

In Richmond, this model owes its existence and governance to two state laws. First, in 1979, the Virginia General Assembly passed a statute granting "governing bodies" of municipalities wide berth to regulate EMS vehicle services. Va. Code Ann. § 32.1-111.14. Such "governing bodies" are empowered to: prohibit the operation of EMS vehicles without a city-issued franchise, license, or permit; limit the number of EMS vehicles allowed to operate in the city; fix the charges for EMS vehicle services; and establish other necessary regulations relating to the operation of EMS vehicles. *Id.* § 32.1-111.14(A). The legislature stated that these powers were "necessary to assure the provision of adequate and continuing emergency medical services and to preserve, protect and promote the public health, safety and general welfare." *Id.* § 32.1-111.14.

Subsequently, in 1991, the General Assembly enacted the Richmond Ambulance Authority Act, creating the RAA as a "public instrumentality exercising public and essential governmental functions." 1991 Va. Acts 645. The legislature granted the RAA authority to "[p]rovide emergency ambulance service originating in the City," as well as "nonemergency service within the Commonwealth." *Id.* This act further provided that the RAA be governed by eleven members: the Richmond City Manager, the Richmond Director of Finance, and nine persons appointed by the Richmond City Council for two-year terms. *Id.* The Richmond City Council subsequently organized the RAA and granted it an indefinite franchise to operate EMS vehicles in the City.

Since its inception in 1991, the RAA has held the City's sole EMS vehicle franchise. Thus, the RAA has provided all services in the City that utilize EMS vehicles, including nonemergency interfacility medical transport services for VA Medical Center patients. In 2018, the VA Medical Center considered contracting with other service providers and opened a bidding process to receive competing quotes. In its request for quotes, the VA Medical Center conditioned any resulting contract on "conformance with . . . all applicable Federal, State and Local laws," and specified that "[b]efore award of a contract, the Service Provider must provide an official City Franchise Permit required to operate patient transport services in the City of Richmond." J.A. 249, 252. Notwithstanding its lack of the necessary permit, Metro Health submitted a bid.

In June 2018, the VA Medical Center conditionally selected Metro Health's bid but simultaneously reiterated that no contract would result unless Metro Health first obtained a permit from the City. Metro Health pressed the City to create a process for entertaining permit applications from private firms. In response, the City posted a permit application on the Richmond Fire Department website. Metro Health perceived the application as unfair and deliberately engineered to prevent it from obtaining a permit. Accordingly, rather than submitting an application, Metro Health immediately filed this suit, seeking a temporary restraining order to prevent interference with its prospective contract. After a hearing, the district court stayed the litigation so that Metro Health could apply for a permit and receive a determination from the City.

Metro Health did so and the Richmond Fire Department initially recommended that Metro Health be granted a permit. But the City Council disagreed; indeed, the Council

voted unanimously to strike a proposed ordinance that would have granted Metro Health a permit.

Metro Health then filed an amended complaint against the City and the RAA, alleging numerous violations of federal and state law. The district court granted the defendants' motion to dismiss, concluding, in relevant part, that the state action immunity doctrine shields the City and the RAA from federal antitrust liability and that their conduct does not offend the Supremacy Clause. Metro Health timely noted this appeal. We review the district court's dismissal of Metro Health's complaint de novo, accepting all well-pleaded allegations as true and construing the facts in the light most favorable to Metro Health. *In re Willis Towers Watson PLC Proxy Litig.*, 937 F.3d 297, 302 (4th Cir. 2019).

II.

Metro Health primarily contends that the City and the RAA have run afoul of the Sherman Act prohibition on monopolization and attempted monopolization. *See* 15 U.S.C. § 2. If, as the defendants assert and the district court found, the state action immunity doctrine shields them from federal antitrust liability, Metro Health cannot succeed on these claims.

Under the state action immunity, or *Parker*, doctrine, federal antitrust laws do "not apply to anticompetitive restraints imposed by the States 'as an act of government.'" *City of Columbia v. Omni Outdoor Adver., Inc.*, 499 U.S. 365, 370 (1991) (quoting *Parker v. Brown*, 317 U.S. 341, 352 (1943)). At bottom, the *Parker* doctrine embodies "the federalism principle that the States possess a significant measure of sovereignty under our

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